

Date Mailed
April 23, 1998

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition For Declaratory Ruling Filed by Madison Gas
and Electric Company, Wisconsin Public Power, Inc.,
and the Wisconsin Municipal Intervenors

3270-DR-102

**NOTICE OF INVESTIGATION AND ASSESSMENT OF COSTS AND REQUEST FOR
COMMENTS**

Comments Due: May 1, 1998 - 12:00 Noon	Address Comments To: Lynda L. Dorr Public Service Commission P.O. Box 7854 Madison, WI 53707-7854
FAX Due Date: April 30, 1998 – 12:00 Noon	

On February 24, 1998, Madison Gas & Electric Company (MGE), Wisconsin Public Power, Inc. (WPPI), and the Wisconsin Municipal Intervenors (WMI) (Joint Petitioners) petitioned the Public Service Commission of Wisconsin (Commission) seeking a declaratory ruling under s. 227.41, Stats., that: 1) the Commission has jurisdiction over the pending Wisconsin Energy Corporation (WEC) and ESELCO, Inc. merger and the pending WPS Resources Corporation (WPSR) and Upper Peninsula Energy Corporation (UPEN) merger; and 2) WEC and Wisconsin Electric Power Company (WEPCO); and WPSR and Wisconsin Public Service Corporation (WPS) must file the requisite application seeking Commission approval for their mergers. Both WEC and WPSR have asserted in their Federal Energy Regulatory Commission (FERC) applications filed in Washington, D.C., that neither Wisconsin nor Michigan have provided their state public service commissions with statutory authority to review the proposed transactions. On January 5, 1998, Commission staff concluded that the Commission does not have jurisdiction over the WPSR-UPEN merger.

The Joint Petitioners take the position the WEC, WPSR, and Commission staff determinations are incorrect. Petitioners note that the Commission has a legal obligation under s. 196.02(1), Stats., to supervise and regulate every public utility in this state and has the authority to do all things necessary and convenient to exercise its jurisdiction. Joint Petitioners allege the Commission has jurisdiction over both the WEC-ESELCO and WPSR-UPEN mergers under the utility merger and holding company statutes, ss. 196.80 and 196.795(2)(c), Stats.

In requesting the Commission issue a declaratory ruling, the Joint Petitioners claim the WEC-ESELCO merger will adversely affect MGE, WPPI, and the WMI because the merger will have a significant detrimental impact on transmission system improvements and expansions from the north, especially for new interconnections with Canada which would ultimately benefit all Wisconsin utilities and enhance electrical system reliability in eastern Wisconsin. Basically, the petitioners believe that WEC will be able to exercise substantial market power after a future interconnection to Canada because it would permit WEC to have network customer priority transactions with Ontario Hydro.

The Joint Petitioners also claim that in the case of the WPSR-UPEN merger, there is the distinct possibility of an increase in the ownership concentration of electricity generation inside Wisconsin Upper Michigan System (WUMS). They claim such a merger would also expand WPSR's ownership of critical transmission facilities. Petitioners object to the WPSR-UPEN merger on the ground it moves in the opposite direction of the state's current electric industry restructuring efforts that seek increased, not less, competition.

WEC is an exempt public utility holding company under the Public Utility Holding company Act of 1935 (PUHCA). Its primary subsidiary is WEPCO, which generates, transmits, distributes and sells electric energy in Wisconsin and the Western Upper Peninsula of Michigan. It also purchases, distributes, and sells natural gas, and distributes and sells steam in Wisconsin. WEPCO's electric service territory is approximately 12,000 square miles (including the Milwaukee area) containing an estimated population of 2,300,000 in southeastern Wisconsin, in east central northern Wisconsin, and in the Western Upper Peninsula of Michigan. WEPCO supplies electric service to approximately 969,000 retail customers. It sells electricity at wholesale to five municipally-owned systems, three rural cooperatives, two municipal joint action agencies, as well as to over 25 other public utilities and power marketers under rates regulated by FERC. WEPCO's gas service territory is approximately 2,800 square miles in Wisconsin with an estimated population of 1,100,000. It supplies gas service to approximately 367,000 customers.

ESELCO is also an exempt public utility holding company under PUHCA. It is incorporated in Michigan. Its primary subsidiary is Edison Sault, a public utility that provides electric service to approximately 21,000 retail customers in Eastern Upper Peninsula of Michigan and one wholesale customer.

WPSR is a Wisconsin corporation and a public utility holding company under PUHCA. Under Section 3(a)(1) of PUHCA, WPSR is exempt from registration and other PUHCA requirements (other than Section 9(a)(2)). WPSR's utility subsidiary, WPS, is a Wisconsin public utility corporation primarily engaged in the generation, transmission, distribution, and sale of electric energy in northeastern Wisconsin and in the southern tip of the Upper Peninsula, adjacent to the Wisconsin border. WPS serves about 370,000 electric customers.

UPEN, a Michigan corporation, is also an exempt public utility holding company under PUHCA. UPEN's utility subsidiary, Upper Peninsula Power Company (UPPCO), is a Michigan public utility corporation engaged in the generation, transmission, and distribution of electric service in primarily rural areas of the western Upper Peninsula. In 1996, UPPCO served 48,000 electric customers.

In light of the Joint Petitioners' request for declaratory ruling, the petitioners' representatives, the representatives of WEC and WPSR, and a representative of the Commission on Monday, March 16, 1998, held a telephone conference to discuss the procedure to be followed in the case. The parties agreed to stipulate to the relevant facts by April 15, 1998, and, if unsuccessful, to file a written response to the petition by May 1, 1998, and to hold another telephone conference on Monday, May 4, 1998, at 10:00 a.m. These dates may change due to the legislature's recent action passing electric reliability legislation in AB 940 that the governor is expected to sign in the coming weeks. In the meantime, the Commission offers the opportunity to any other person to submit comments on the matter at hand. Specifically, the Commission is interested in receiving legal and technical comments in the following issue area:

What jurisdiction does the Commission have, if any, to regulate the pending WEC-ESELCO and WPSR-UPEN mergers under ss. 196.80 and 196.795(2)(c), Stats.?

In submitting legal and technical comments, parties should be aware that Commission staff will review all material and recommend to the Commission the necessary steps for further action. Commission staff review may or may not establish a basis for this docket to go to hearing. Depending on the comments and material received, the possibility exists that a hearing may be unnecessary in this case if facts are stipulated and/or no additional facts are necessary. If so, the legal issues may be presented through briefs for the Commission to decide the issues. If a hearing is required, a notice of hearing will be issued. For further information on this process please contact Kevin Cronin, chief counsel Electric Division at (608) 267-9203.

Copies of the Joint Petitioners' petition for declaratory ruling may be obtained by written request to Mr. Lester A. Pines, Cullen, Weston, Pines, and Bach, 20 North Carroll Street, Madison, WI 53703. Mr. Pines serves as counsel for Madison Gas & Electric Company in this docket.

The Commission advises interested parties to this docket to begin discovery, if any, immediately.

NOTICE IS GIVEN that this matter is considered to be a Class 1 proceeding as defined in s. 227.01(3)(a), Stats.

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's

attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

Legal and any other comments on the petition for declaratory ruling are due in parties' hands and the Commission on May 1, 1998, at 12:00 noon, unless such date and time is otherwise extended by amended notice. Written comments should include the above docket number and be addressed to Lynda L. Dorr, Secretary to the Commission, P. O. Box 7854, Madison, Wisconsin 53707-7854. Parties should file the original and 15 copies (except when faxed).

Persons who desire to actively participate as full parties must request full party status in writing. Full party status requests should be addressed to Nancy Anthony, Examining Division, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, Wisconsin 53707-7854.

NOTICE IS FURTHER GIVEN that the Commission considers it necessary in order to carry out its duties to investigate the books, accounts, practices, and activities of the Joint Petitioners. The expenses incurred or to be incurred by the Commission which are reasonably attributable to the investigation will be assessed against and collected from the petitioners, as s. 196.85, Stats., and ch. PSC 5, Wis. Adm. Code authorize.

If there are any questions regarding full party status requests or the hearing scheduled in this notice, please contact the Nancy Anthony, Examining Division at (608) 266-1261.

Other questions regarding this matter may be directed to Kevin Cronin, at (608) 267-9203 or Randel Pilo, at (608) 267-1474.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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